

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.286 of 2003

Pradeep Kumar Das **Appellant**

Mr. Abhisek Pradhan, Advocate

-versus-

State of Odisha **Respondent**

*Mr. Sidharth Shankar Mohapatra
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
13.07.2023**

Order No.

10.

This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard Mr. Abhisek Pradhan, learned counsel appearing for the appellant and Mr. Sidharth Shankar Mohapatra, learned Additional Standing Counsel for the State of Odisha.

This criminal appeal has been filed by appellant Pradeep Kumar Das under section 449 of the Cr.P.C. challenging the impugned order dated 18.09.2003 passed by the learned Additional Sessions Judge, Nuapada in C.M.C. No.01 of 1997.

It appears that the appellant stood as surety for the accused persons in Komna P.S. Case No.01 of 1997 which corresponds to G.R. Case No.21 of 1997 in

the Court of learned S.D.J.M., Nuapada in which the accused persons were charge sheeted under sections 147/148/323/294/149 of the Indian Penal Code read with section 3(1)(x) of the S.C. & S.T. (PoA) Act. The four accused persons, namely, Indramani Panigrahi, Sanjiba Panda, Lalit Das and Dweja Sabar were released on bail as per the order of the learned Special Judge, Kalahandi-Nuapada at Bhawanipatna vide order dated 27.01.1997 with certain conditions and one of such conditions was that they shall appear before the Investigating Officer at Komna police station on every Saturday at 10.00 a.m. and the appellant stood as a surety for the accused persons and furnished the bail bond.

On 01.02.1997, the appellant filed an advance petition in Court through his counsel stating therein that he might be discharged as surety and appropriate order may be passed in that respect and it was stated in the petition that he had gone to the village of the accused persons to produce them at Komna police station on Saturday i.e. on 01.02.1997 as per the terms and conditions of the bail order but could not find them in their respective houses and on an enquiry, he would come to know that the accused persons had been entangled in another case for which they had not gone to appear before the Investigating Officer in the police station.

The learned Special Judge on receipt of the application and on hearing the counsel for the appellant rejected the petition filed by the appellant and issued non-bailable warrant of arrest against the accused persons for their production on the date fixed. The learned Special Judge simultaneously directed to start a separate Misc. Case against the appellant. As per the direction of the learned Special Judge, Criminal Misc. Case No.01 of 1997 was initiated and the appellant was noticed to file his show cause after forfeiture of bail bond as to why the amount of bond shall not be realized from him. The appellant on receipt of the notice filed his show cause and stated his bonafideness in bringing to the notice of the Court, the conduct of the accused persons in disobeying the bail order and to discharge him as the surety. It was also brought to the notice that since the accused persons have been acquitted of the charges levelled against them vide judgment and order dated 13.04.2002, fine should not be imposed on him. However, the learned Additional Sessions Judge -cum- Special Judge, Nuapada vide the impugned order dated 18.09.2003 imposed penalty of Rs.20,000/- (rupees twenty thousand) on the appellant and also issued D.W.A. along with conditional non-bailable warrant of arrest against the appellant.

Mr. Abhisek Pradhan, learned counsel

appearing for the appellant submitted that the forfeiture of bail bond without giving any opportunity to the appellant to have his say is illegal and it is against the salutary principles of natural justice. The learned counsel further submitted that when the appellant himself brought to the notice of the Court about the conduct of the accused persons and expressed his unwillingness to continue as surety for them, the learned trial Court should have noticed the accused persons for giving fresh surety and as such, the forfeiture of bail bond is illegal and the impugned order cannot be sustained in the eye of law.

Mr. Sidharth Shankar Mohapatra, learned Additional Standing Counsel for the State of Odisha has supported the impugned order.

Against this backdrop, it is pertinent to discuss the relevant provisions under the Cr.P.C. which prescribe the procedure when a surety seeks to discharge his bond. Section 444 of Cr.P.C., which provides for discharge of sureties, reads as follows:-

“(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest

directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.”

From the above exposition of the provision, it is apparent that if any surety for bail seeks to discharge his bond, he is required to apply for the same before the concerned Court. After receiving application to that effect, the Court concerned is duty-bound to issue an arrest warrant against the person who was released on bail consequent upon the bond of such surety. Following the appearance of such person, the Magistrate shall discharge the bail bond of the surety and shall ask the person to find other sufficient sureties and if he fails to do the same, the Court can commit such person to jail.

The object of taking surety, inter alia, is for the purpose of ensuring the availability of an accused before the Court by the surety when the dates of trial are fixed and on the date of pronouncement of judgment. The terms of a bond have to be construed

strictly. When the bond is forfeited, it is the duty of the Court to record the grounds of proof on which the forfeiture is based. Nowhere it is provided that when a surety seeks to discharge himself, the Court concerned shall initiate criminal proceedings against him.

While discussing the methodology for discharge of sureties, the Hon'ble Supreme Court in the case of **Raghubir Singh and Others -Vrs.- State of Bihar reported in (1986) 4 Supreme Court Cases 481** has aptly held as follows:

"20. It may happen that a person who has been accepted as a surety may later desire not to continue as a surety. Section 444 enables such a person, at any time, to apply to a Magistrate to discharge a bond either wholly or so far as it relates to the surety. On such an application being made, the Magistrate is required to issue a warrant of arrest directing the person released on bail to be brought before him. On the appearance of such person or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as it relates to the surety, and shall call upon such person to find other sufficient surety and if he fails to do so, he

may commit him to jail. (sec. 444). **On the discharge of the bond, the responsibility of the surety ceases and the accused person is put back in the position where he was immediately before the execution of the bond.**" (Emphasis supplied)

While elucidating the principle of *audi alteram partem* and emphasizing the importance to comply with the right to be heard of an affected person, the Hon'ble Supreme Court in the celebrated case of **Maneka Gandhi v. Union of India reported in (1978) 1 Supreme Court Cases 248**, held as follows:

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action."

Law is well settled that before a decision is taken to forfeit the bond, a hearing to the affected party becomes the demand of natural justice and the

same is to be read into a statute even though there is no express provision therein complying with the same unless the context of the statute excluded the rule of *audi alteram partem*. Direction to forfeit the bond involves a process of decision as to why the amount under the bond shall not be recovered from the executant.

It seems that the learned Additional Sessions Judge -cum- Special Judge has failed to appreciate the aforesaid position of law and at the stroke of judicial passion, passed the impugned order by tightening criminal liability on a person who being the surety of the accused persons, with all bona fide credential, informed the Court of his predicament to continue as such. It was hardly incumbent upon the learned Presiding Officer to employ such harsh punitive measures on such a person.

Considering the submissions made by the learned counsel for the respective parties, it is held that the forfeiture of the bail bond without giving opportunity of hearing to the appellant to have his say is illegal and suffers from the vice of derogation of principles of natural justice. Again, in view of the *bona fide* conduct of the appellant in bringing to the notice of the Court the conduct of the accused persons in flouting the terms and conditions of the bail bond, the action taken against the appellant, i.e. imposition of

penalty amount of Rs.20,000/- (rupees twenty thousand) and issuance of D.W.A. and conditional non-bailable warrant of arrest particularly when the accused persons for whom the appellant stood as surety have been acquitted, cannot be sustained in the eye of law, which is accordingly set aside.

Accordingly, the CRLA is allowed.

Urgent certified copy of this order be granted on proper application.

(S.K. Sahoo)
Judge



RKM